TOPICAL INDEX

	Page
Questions Presented	2
Statement of the Case	2
Argument	5
1. Petitioner Has No First Amendment Right of Access to Gather Information at the Scenes of Crimes and Disasters Superior to That of the General Public	5
2. Petitioner Was Not Denied Equal Protection of the Laws By Respondents' Policy to Grant Priority to Cross Police Lines At the Scenes of Crimes and Disasters to Members of the News Media Who Regularly Report Police and Fire News	9
Conclusion	14

TABLE OF CASES CITED

	Page
Allied Stores of Ohio v. Bowers, 358 US 522, 3 L. ed 2d 480, 486, 79 S. Ct. 437	11
Bilyeu v. State Employees Retirement System, 58 Cal. 2d 618, 623	11
County of Los Angeles v. So. Calif. Telephone Co., 32 Cal. 2d 378, 388-389	11
Dandridge v. Williams, 397 US 471, 25 L. ed 2d 491, 501-502 90 S. Ct. 1153	11
Grosjean v. American Press Co. 297 US 233, 80 L. ed 660, 56 S. Ct. 444	9

Page

Lamont v. Postmaster General, 381 US 301, 14 L. ed 2d 398, 85 S. Ct. 1493 9
Louisville & Nashville RR Co. v. Melton, 218 US 36; 54 L. ed 921, 929; 30 S. Ct. 676 10
Leonard v. Vicksburg, etc. RR Co., 198 US 416, 49 L. ed 1108, 1111 8
McLaughlin v. Florida, 379 US 184, 13 L. ed 2d 222, 228, 85 S. Ct. 283 10
N.Y. Post Corp. v. Moses, 204 NYS 2d 44, 53 7
Richmond Chronicle v. Groth 9
State v. Buchanan, 250 Ore. 244, 436 Pac. 2d 729 6
Strasser v. Doorley, 309 Fed. Supp. 716 9
Tribune Review Publishing Co. v. Thomas, 254 Fed. 2d 883 5
Trimble v. Johnston, 173 Fed. Supp. 651, 656 7
United Press Assn. v. Valente, 308 NY 71, 123 NE 2d 777 7
Werner v. So. Calif. Associated Newspapers, 35 Cal. 2d 121, 131 11
Whitney v. California, 274 US 357, 71 L. ed 1095, 1103, 47 S. Ct. 641 10
Worthy v. Herter, 270 Fed. 2d 905 7
Zemel v. Rusk, 381 US 1, 14 L. ed 2d 179, 85 S. Ct. 1271 5

In the

Supreme Court of the United States

October Term, 1970

No. 1171

THE LOS ANGELES FREE PRESS, INC., a California corporation,

Petitioner,

vs.

THE CITY OF LOS ANGELES, a municipal corporation; THOMAS REDDIN, Chief of Police of the City of Los Angeles; THE COUNTY OF LOS ANGELES; PETER PITCHESS, Sheriff of Los Angeles County,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

To the Honorable Warren Burger, Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondents respectfully submit, pursuant to Rule 24 of this court, that the petition for writ of certiorari filed herein should be denied on the grounds that this case is not one presenting any substantial federal question not heretofore determined by this court or any "special and important" reasons required by Rule 19 of this court for review by writ of certiorari.

QUESTIONS PRESENTED

1. Does the First Amendment to the United States Constitution give the petitioner a right of access to gather information at the scenes of crimes and disasters superior to that of the general public?

2. Was the petitioner denied equal protection of the laws by respondents' policy to grant priority to cross police lines at the scenes of crimes and disasters to those members of the news media who regularly report police and fire news?

STATEMENT OF THE CASE

As set forth in the findings of fact of the trial court, which are included verbatim in the decision of the Court of Appeal of the State of California reported in 9 Cal. App. 3d 448 at pages 451-453, the petitioner applied to the Los Angeles Police Department and the Los Angeles County Sheriff's Department for issuance of press passes to its reporters. These passes are used by representatives of the news media to cross police lines and enter areas closed to the general public to provide access to information at the location of crimes, fires, or natural disasters and press conferences held by policing authorities where such access is denied to the public generally.

The number of press passes issued by respondents is restricted for the purpose of protecting the public

safety, health and welfare and to contribute to the efficient performance of police duties at crime and disaster scenes.

The respondents have refused and continue to refuse press passes to free lance and part-time reporters, representatives of specialized publications and members of the news media generally who perform functions other than those directly connected with the regular gathering and distribution of hard core news generated through police and fireman activities.

Respondents denied petitioner's application for press passes for its employees because their investigation of petitioner's application showed that petitioner's publication did not regularly engage in the gathering and reporting of spot, hard core police and fire news and that a need for press passes was lacking. Respondents' investigation established that petitioner is instead engaged in publishing materials primarily consisting of feature articles with some essay type reports having to do with events current and past such as riots, demonstrations, etc. where the reporting of such events focused largely on sociological considerations.

Twenty separate editions of the Free Press introduced at the trial for the purpose of reflecting the paper's editorial content and format established that such editions carried no current regular hard core police beat or fire news as such, and that the news coverage of such issues was pointed toward sociological prob-

lems existing in society. (Findings of Fact-Clk. Tr. Pages 170-174)

Petitioner's assertion in its statement of the case that respondents denied press passes to its reporters because they disapproved of petitioner's newspaper are not substantiated by the record and are contradicted by the findings of the trial court. (Clks. Tr. pages 170-174)

Petitioner's further contention that respondents manufactured various grounds for not issuing press passes is equally contrary to the trial court findings.

Petitioner's statement of the case ignores the findings of fact of the trial court and is based almost entirely on excerpts from the testimony of two witnesses, Sgt. Campbell and Sgt. Cooke, taken out of context. These excerpts are inconsistent with the rest of the testimony of these witnesses and the matters included in the quoted excerpts were not found to be true by the findings of the court.

ARGUMENT

1. PETITIONER HAS NO FIRST AMENDMENT RIGHT OF ACCESS TO GATHER INFORMATION AT THE SCENES OF CRIMES AND DISASTERS SUPERIOR TO THAT OF THE GENERAL PUBLIC.

This court and other Federal and State courts, in many cases, have already passed on the question whether the right to gather information is protected by the First Amendment and have uniformly held that it is not.

In *Zemel v. Rusk*, 381 US 1, 14 L. ed. 2d 179, 85 S. Ct. 1271, this court held that the First Amendment right to speak and publish does not carry with it the unrestrained right to gather information, and said at page 190 of 14 L. ed 2d:

> " . . . We must agree that the Secretary's refusal to validate passports for Cuba renders less than wholly free the flow of information concerning that country. While we further agree that this is a factor to be considered in determining whether appellant has been denied due process of law, we cannot accept the contention of appellant that it is a First Amendment right which is involved. For to the extent that the Secretary's refusal to validate passports for Cuba acts as an inhibition (and it would be unrealistic to assume that it does not), it is an inhibition of action. There are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House diminishes

the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right. The right to speak and publish does not carry with it the unrestrained right to gather information."

In *Tribune Review Publishing Co. v. Thomas*, 254 Fed. 2d 883, the United States Court of Appeals, Third Circuit, came to the same conclusion, and said at page 885:

"Realizing that we are not dealing with freedom of expression at all but with rules having to do with gaining access to information on matters of public interest, can it be argued that here there is some constitutional right for everybody not to be interfered with in finding out things about everybody else? We suppose it would not be contended that a newspaper reporter or any other citizen could insist upon entering another's land without permission to find out something he wanted to know . . . We think that this question of getting at what one wants to know, either to inform the public or to satisfy one's individual curiosity is a far cry from the type of freedom of expression, comment, criticism so fully protected by the first and fourteenth amendments of the Constitution."

In *State v. Buchanan*, 250 Ore. 244, 436 Pac. 2d 729, the court said at page 731 of 436 Pac. 2d:

> " . . . While the government from time to time extends to selected representatives of news media privileges (such as access to war zones and seats on a presidential aircraft) not accorded the general public, it has not been suggested that these privileges are necessarily rights conferred by the Constitution solely upon those who can qualify as members of the press.
>
> On the contrary, it has been held that those claiming to be news gatherers have no constitutional right to information which is not accessible to the public generally."

The New York Court of Appeals in *United Press Assn. v. Valente*, 308 NY 71, 123 NE 2d 777, said at page 783 of 123 NE 2d:

> "The fact that petitioners are in the business of disseminating news gives them no special right or privilege, not possessed by other members of the public."

To the same effect, see *Worthy v. Herter*, 270 Fed. 2d 905; *N.Y. Post Corp. v. Moses*, 204 NYS 2d 44, 53.

In *Trimble v. Johnston*, 173 Fed. Supp. 651, 656, the court held that liberty of the press does not include any legal right to assistance from public officials in procuring information and does not include a right on the part of representatives of the press to inspect documents not open to members of the public generally.

In view of the many cases which have already passed on this question and declared the First Amend-

ment inapplicable, there is no substantial Federal question to decide in this case nor is there any "special or important" reason to review the matter again by writ of certiorari herein. (Rule 19, Rules of the United States Supreme Court)

A Federal question suggested by a petitioner may have been so explicitly foreclosed by previous decisions as to leave no room for real controversy and afford no basis for a writ of error from the Supreme Court of the United States to a state court.

> *Leonard v. Vicksburg, etc. RR Co.*, 198 US 416, 49 L. ed. 1108, 1111 and cases cited therein.

The fact that the petitioner describes itself as "an 'underground' newspaper—a new breed of publication with a new political point of view; a publication aimed at the young and radical" gives it no greater right of access to the scenes of crime or disaster than it would otherwise have and presents no "special or important" reason for review by certiorari.

The record fails to support petitioner's contentions that respondents use the system of press passes to interfere with the news gathering function of the so-called radical press or that petitioner's employees are denied access to cross police lines and enter press conferences simply because of the content of the Free Press. Petitioner's claim that this presents an issue for decision by this court is therefore groundless.

Neither *Lamont v. Postmaster General*, 381 US 301, 14 L. ed 2d 398, 85 S. Ct. 1493, *Grosjean v. American Press Co.* 297 US 233, 80 L. ed 660, 56 S. Ct. 444, nor *Strasser v. Doorley*, 309 Fed. Supp. 716, cited by petitioner, considered or discussed the question whether seeking and gathering information by reporters for the news media was a First Amendment right. There is no indication in the petition for certiorari that *Richmond Chronicle v. Groth* did either.

The above authorities lend to the conclusion that, despite petitioner's contentions to the contrary, there is really no first amendment right involved in this case.

2. PETITIONER WAS NOT DENIED EQUAL PROTECTION OF THE LAWS BY RESPONDENTS' POLICY TO GRANT PRIORITY TO CROSS POLICE LINES AT THE SCENES OF CRIMES AND DISASTERS TO MEMBERS OF THE NEWS MEDIA WHO REGULARLY REPORT POLICE AND FIRE NEWS.

Issuance of press passes by the respondents constituted an exercise of the police power to control the number of persons present at the scene of a crime or disaster for the purpose of allowing law enforcement and rescue personnel to carry out their duties without interference and to promote the order, safety, health and welfare of society.

This court and other courts have long ago clearly established the law relating to the requirements of equal protection in the exercise of the police power. The California court decision sought to be reviewed

herein is completely consistent with the established law and there is no important question of Federal law to be decided in this case.

The equal protection clause of the Federal Constitution does not take from a state the power to classify in the adoption of police regulations and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

> *Whitney v. California*, 274 US 357, 71 L. ed. 1095, 1103, 47 S. Ct. 641.

Normally state officers have the widest discretion in the exercise of the police power and that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious.

> *McLaughlin v. Florida*, 379 US 184, 13 L. ed 2d 222, 228, 85 S. Ct. 283 and cases cited therein.

In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things.

> *Louisville & Nashville RR Co. v. Melton*, 218 US 36; 54 L. ed 921, 929; 30 S. Ct. 676.

A classification, though discriminatory, is not arbitrary nor violative of the equal protection clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it.

Allied Stores of Ohio v. Bowers, 358 US 522, 3 L. ed 2d 480, 486, 79 S. Ct. 437.

If classification has some reasonable basis, it does not offend the Constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality.

Dandridge v. Williams, 397 US 471, 25 L. ed 2d 491, 501-502, 90 S. Ct. 1153.

The equal protection clause does not prevent classification nor require uniform treatment with respect to purposes or things which are in fact different.

County of Los Angeles v. So. Calif. Telephone Co., 32 Cal. 2d 378, 388-389.

There is no constitutional requirement of uniform treatment, only that there be a reasonable basis for the classification imposed.

Bilyeu v. State Employees Retirement System 58 Cal. 2d 618, 623.

A classification is reasonable if there are differences between the classes that are reasonably related to the purposes of the statute.

Werner v. So. Calif. Associated Newspapers, 35 Cal. 2d 121, 131.

The standard adopted by the respondents here of regular coverage of police and fire news for the issuance of press passes is clearly a reasonable basis for

classification of persons who seek to cross police lines, is closely related to the purpose for which it was established and treats alike all persons similarly situated.

Petitioner has failed to show that there is any "special or important" reason for granting a writ of certiorari herein.

The petition for certiorari reflects petitioner's lack of understanding of the respondents' basis for issuing press passes and the need for the press pass system and his contentions as to equal protection are clearly specious.

The creation of the press pass system did not create a class of petitioner's equals, but created a system of priority in granting permission to cross police lines based on the need to enter closed areas at the scenes of crimes and disasters. This basis is clearly and rationally related to the police power necessity of limiting the number of those present at such places. The public interest in seeing that law enforcement officers, fire fighters, medical and rescue personnel and disaster workers are able to carry out their duties without interfence in emergency situations involving risk of death or serious injury to people and extensive damage to property is so clear and compelling as not to require further elaboration.

Clearly this classification is neither arbitrary nor unreasonable.

Since the basis established by respondents for issu-

ing press passes is unquestionably valid, it is irrelevant whether or not other applicants have or have not been denied press passes.

Petitioner's suggestion that, instead of preventing an applicant from ever attending a news event, respondents should determine whether at any particular news event a limited number of reporters should be allowed, is unrealistic. Law enforcement officers have many and pressing duties at crime and disaster locations and cannot take the time to decide conflicting claims for access.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

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